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CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)
Plaintiff-Appellee,) Filed February 24, 1981
vs.)
RONNIE KAY MATLOCK,) 0-319
Defendant-Appellant.) 63325

Appeal from Black Hawk District Court - L. John Degnan, Judge.

Defendant appeals conviction of second degree sexual abuse in violation of section 709.3, Supplement to the Code 1977. REVERSED AND REMANDED.

W. H. Gilliam of Rapp & Gilliam, Waterloo, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Richard L. Cleland, Assistant Attorney General, for plaintiff-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

DONIELSON, J.

Defendant Ronnie Kay Matlock appeals his conviction for second degree sexual abuse in violation of section 709.3, Supplement to the Code 1977. As grounds for reversal on appeal, defendant contends: 1) that he should not have been tried with his four co-defendants; 2) that a hand is not a "substitute" as that word is used in the definition of a "sex act" in section 702.17, Supplement to the Code 1977; 3) that the trial court erroneously limited cross-examination of certain witnesses for the State; 4) that he was denied a public trial; 5) that the jury instruction on aiding and abetting was erroneous; 6) that it was error to admit photographs of the jail because they inaccurately depicted the premises; 7) that counsel was erroneously allowed to read questions and answers from depositions; and 8) that the trial court abused its discretion in sentencing the defendant to twenty-five years in prison. Because we hold that the trial court erred in limiting cross-examination of certain State witnesses, we reverse defendant's conviction and remand for a new trial.

Our review of this appeal is limited to correction of errors at law. Iowa R. App. P. 4.

I.

On August 16, 1978, defendant, along with four others, was charged by information with second degree sexual abuse in connection with an alleged homosexual assault on an inmate at the Black Hawk County Jail on August 12, 1978. The five defendants were tried jointly before a jury, which returned verdicts of guilty as charged against all defendants. Defendant was sentenced to an indeterminate prison term of twenty-five years. The convictions of three of the other defendants have been reversed by this court on the grounds that cross-examination was improperly limited. State v. Owen, No. 63346 (Iowa Ct. App., filed August 26, 1980); State v. Randall, No. 63314 (Iowa Ct. App., filed March 31, 1980); State v. Bird, No. 63326 (Iowa Ct. App., filed December 27, 1979).

II.

Defendant contends that the trial court erred in refusing to allow him to cross-examine the complainant regarding his alleged prior homosexual activity and prior false accusations made by the complainant of homosexual attacks on his person. Defendant also contends error in the trial court's refusal to allow him to cross-examine key State witnesses concerning the existence and disposition of felony charges pending against

them and concerning whether those witnesses, acting in concert with the complainant, hoped to recover damages for the assault in a civil suit. Defendant maintains that these restrictions on cross-examination violated his sixth amendment right of confrontation, and we agree.

The extent and scope of cross-examination is generally a matter within the discretion of the trial court. State v. Sheffey, 250 N.W.2d 51, 55 (Iowa 1977); State v. Menke, 227 N.W.2d 184, 191 (Iowa 1975). Abuse of that discretion exists when matters vital and proper to the defense of the accused are excluded. State v. Carney, 236 N.W.2d 44, 46 (Iowa 1975) (citing State v. Rowe, 238 Iowa 237, 243, 26 N.W.2d 422, 425 (1947)). The right to cross-examine is included within the right to confront adverse witnesses. Sheffey, 250 N.W.2d at 54. It is essential to a fair trial and is a right to be "jealously guarded." Id. at 55.

We conclude that the trial court abused its discretion in limiting the scope of defendant's cross-examination of the complainant. In an offer of proof made by the defendant, the complainant admitted giving to the police as a hoax a sworn statement in which he falsely accused two men of threatening him with a homosexual assault. Defendant desired to cross-examine on this subject for the purpose of impeaching the complainant's credibility; cross-examination for the purpose of impeachment is clearly allowed. State v. Droste, 232 N.W.2d 483, 489 (Iowa 1975); State v. Johnson, 219 N.W.2d 690, 695-96 (Iowa 1974). The trial court also restricted defendant's efforts to cross-examine the complainant about the latter's psychiatric history, which defendant believed would reveal prior homosexual activity on the part of the complainant. The prior psychiatric history of a witness is also a proper subject for cross-examination when accompanied by a sufficient offer of proof. See State v. Harvey, 242 N.W.2d 330, 336-38 (Iowa 1976). Evidence of any prior homosexual activity by the complainant would also be relevant to a possible consent defense. Therefore, in view of the nature of the allegations, the severity of the charge, and the fact that the defendant made sufficient offers of proof regarding the complainant's prior deceptive conduct and psychiatric history, we hold that the trial court abused its discretion in limiting defendant's cross-examination of the complainant.

We reach the same conclusion with regard to restrictions placed on defendant's cross-examination of other State witnesses. Inquiry as to the existence and disposition of felony charges pending against those witnesses was relevant to assess the witnesses'

credibility. After hearing this evidence, the jury could reasonably have inferred that their testimony was a consequence of witness cooperation in return for the State's promise to drop charges against them. Any restriction on cross-examination that produced this effect would be an abuse of discretion. See United States v. Verdoorn, 528 F.2d 103, 107 (8th Cir. 1976); State v. Donelson, No. 63595, slip op. at 6-8 (Iowa, filed February 18, 1981); State v. Trost, 244 N.W.2d 556, 559-60 (Iowa 1976). Furthermore, defendant attempted to show that these witnesses may have had a pecuniary interest in the outcome of the case, since there was some evidence to suggest an understanding that a conviction in this criminal matter would facilitate judgment for the complainant in a civil suit for assault against the county. Where a witness may have an interest in the outcome of a case, it is a proper subject of impeachment to expose that interest. State v. Armento, 256 N.W.2d 228, 229 (Iowa 1977), State v. Klinger, 185 N.W.2d 759, 761 (Iowa 1971). We therefore hold that restricting cross-examination of these State witnesses was error.

Moreover, the trial court's abuse of discretion with respect to the scope of cross-examination was prejudicial to the defendant. The witnesses he sought to cross-examine, particularly the complainant, were all important and in fact crucial to the issue of guilt. See Carney, 236 N.W.2d at 45 (citing State v. Sampson, 248 Iowa 458, 461, 79 N.W.2d 210, 212 (1956)). Having thus found reversible error, we must decide whether to simply reverse the conviction or to reverse and remand for a new trial. Because we find that there is substantial evidence to support the jury verdict when only evidence supporting that verdict is considered and is viewed in the light most favorable to the State, State v. Holderness, 293 N.W.2d 226, 235 (Iowa 1980), we reverse the conviction below and remand for a new trial. Having made this determination, we do not address defendant's other claims.

REVERSED AND REMANDED.